

Message Text

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ORIGIN OPIC-06

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DRAFTED BY OPIC/GC CECIL HUNT

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TO AMEMBASSY MUSCAT IMMEDIATE

INFO AMEMBASSY CAIRO IMMEDIATE

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CAIRO FOR MORGAN

E.O. 11652: N/A

TAGS: EINV

SUBJECT: OPIC INVESTMENT INCENTIVE AGREEMENT

REF: MUSCAT 0224

1. REFTEL PARA. 1(A) CHANGE APPROVED.

2. REFTEL PARA. 1 (B) CHANGE APPROVED IF OMANGOV INSISTS
AFTER REVIEW WITH OPIC REP. OF REASONS WHY ADDING REFERENCE TO
INVESTMENTS "BY UNITED STATES NATIONALS" IS NOT NECESSARY TO
PROTECT INTERESTS OF OMANGOV AND MAY IMPLY LIMITS ON PROJECT
INVESTMENT STRUCTURING WHICH COULD REDUCE ATTRACTIVENESS
OF OMAN TO FOREIGN COMPANIES.

3. SEVERAL OF THE BILATERAL AGREEMENTS UNDER WHICH OPIC
OPERATES ALSO CONTAIN SOME REFERENCE TO INVESTMENTS BEING
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BY U.S. NATIONALS. E.G., 1967 AGREEMENT WITH SWAZILAND (TIAS

6350) STARTS PARA. ONE "WHEN NATIONALS OF THE GUARANTEEING GOVERNMENT PROPOSE TO INVEST" AND CONTINUES LIKE PARA. ONE TEXT IN PROPOSED OMAN AGREEMENT. IN EITHER CASE, IT IS POSSIBLE TO CONSTRUE NATIONALITY REFERENCE TO INCLUDE INVESTMENT BY U.S. NATIONALS FLOWING INDIRECTLY TO PROJECT THROUGH OFFSHORE SUBSIDIARIES OR THROUGH MULTINATIONAL INVESTMENT VEHICLE, SUCH AS 234(A)(2) OF OPIC STATUTE PROVIDES FOR, ALTHOUGH OMAN PROPOSAL MAY GIVE LESS SUPPORT TO THIS CONSTRUCTION. WHERE BILATERAL REFERS TO NATIONALITY OF INVESTOR, OPIC PRACTICE HAS BEEN TO CONFIRM THAT FOREIGN GOVERNMENT APPROVAL (FGA) AND APPLICATION THEREFOR MAKE IT CLEAR THAT HOST GOVERNMENT IS AWARE THAT INVESTMENT IS BEING MADE THROUGH AN ELIGIBLE, NON-US VEHICLE.

4. HOST GOVERNMENT CONTROLS SITUATION THROUGH FGA PROCESS. IN A COMPLEX, MULTILATERAL INVESTMENT IT COULD CONTRACTUALLY PROTECT ITSELF AGAINST DIVISIBILITY OF A CLAIM AGAINST OMANGOV AND CONFIRM THIS IN FGA. NOTE EXPLICIT LIMITATION ON INSURER'S RIGHTS PER PENULTIMATE SENTENCE PARA. 3 OF BILATERAL.

5. OMANGOV SHOULD NOTE THAT COMPANIES MAY WANT CHANNEL INVESTMENT THROUGH OFFSHORE SUBSIDIARIES, AND THIS IS NO DISADVANTAGE TO OMAN. BILATERAL PROVIDES AGREED PROCEDURES FOR DEALING WITH INSURER GOVERNMENT, THE REAL PARTY IN INTEREST IN A CLAIM SITUATION.
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